IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 7399 of 2004(E)

PETITIONER:

N. KARUNAKARAN NAIR, (EX-SEPOY
NO.25570 94, INDIAN ARMY, MADRAS REGIMENT)
SAINIKA SEVASRAMAM, KAKKANAD, KUSUMAGIRI P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.S.MADHAVAN NAIR

RESPONDENTS:

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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY (DEFENCE), MINISTRY OF DEFENCE,
NEW DELHI.

2. THE OFFICER-IN-CHARGE,
OIC RECORDS, MADRAS REGIMENT CENTRE,
WILLINGTON (NILGIRIS), 643 231.

3. THE CHIEF CONTROLLER OF DEFENCE
(ACCOUNTS (PENSION), G3/RA SECTION,
ALLAHABAD.

4. THE DEFENCE PENSION DISBURISING
OFFICER, DPDO, KOLLAM.

5. THE DEFENCE PENSION DISBURSING
OFFICER, D.P.D.O., ERNAKULAM.

ADDL.R6: LT. COL. S.S. KUMAR, OFFICER COMMANDANT , 18 , MADRAS,
C/O. 56 APO

R7: CAPT. V.D. MISRA, 18 'B" COMPANY COMMANDER, 18 MADRAS, DO.

R8: DIRECTOR GENERAL, ARMY MEDICAL CODE, MEDICAL DIRECTORATE,
D.M..S. 4, NEW DELHI - 11.

(ADDL. RESPONDENTS IMPLEADED AS PER ORDER ON IA 8698/05 DT.12.8.05)

BY ADV. SRI.S.KRISHNAMOORTHY, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE PENSION CERTIFICATE OF THE PETITONER ISSUED BY R2 DATED 2.7.03

EXT.P2-TRUE COPY OF THE LETTER DATED 16.10.03 TO R1

EXT.P3-TRUE COPY OF THE APPEAL DATED 20.8.03 SUBMITTED BY THE PETITIONER BEFORE R2

EXT.P4-TRUE COPY OF LETTER DATED 1.9.03 ISSUED BY THE 2ND RESPODNENT TO THE PETITONER

EXT.P5-TRUE COPY OF LETTER DATED 10.10.03 RECEIVED BY THE PETITONER

EXT.P6-TRUE COPY OF DISCHARGE SLIP ISSUED BYR2 TO THE MH HOSPITAL, WELLINGTON.

EXT.P7-TRUE COPY OF THE LETTER DATED 16.10.2003 ISSUED BY R2 TO MH HOSPITAL, DO.

EXT.P8-TRUE COPY OF THE DISCHARGE CARD ISSUED BY GOVT. AYURVEDA COLLEGE HOSPITAL, TRIVANDRUM WITH ADMISSION DATED 12.3.04

EXT.8(A)-TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF PETITIONER DATED 7.10.2003

EXT.P9-TRUE COPY OF THE CERTIFICATE ISSUED BY VILLAGE OFFICER, KAKKANAD DATED 17.5.2005

EXT.P10-TRUE COPY OF THE OLD PENSION BOOK FROM THE YEAR 1967 NOVEMBER

EXT.P11-TRUE COPY OF THE SERVICE DISCHARGE CERTIFICATE

EXT.P12-TRUE COPY OF THE MILITARY IDENTITY CARD

EXT.P13-TRUE COPY OF COMMUNICATION BY THE DISTRICT COLLECTOR, ERNAKULAM TO THE ZAINIK WELFARE OFFICER.

EXTS. PRODUCED IN IA 8699/05

EXT.P10-TRUE COPY OF RE-ASSESSMENT OF DISABILITY PENSION ORDER DT.19.12.01

EXT.P10(A)-TRUE COPY OF DISCHARGE SLIP DATED 5.10.01 ISSUED ALONG WITH EXT.P10

EXT.P11-TRUE COPY OF HOSPITAL ADMISSION BY FORM

EXT.P11(A)-TRUE COPY OF DISCHARGE SLIP

EXT.P12-TRUE COPY OF CERTIFICATE ISSUED BY VILLAGE OFFICER, KAKKANAD DT.17.5.05

RESPONDENTS' EXTS:

EXT.R1-TRUE COPY OF LETTER ISSUED BY THE CAPT. RECORDS OFFICER, THE MADRAS REGIMENT DT.31.10.67

EXT.R2: TRUE COPY OF LETTER DATED 1.5.97 ISSUED BY DO.

EXTR3: TRUE COPY OF LETTER DATED 7.12.2000 ISSUED BY PCDA (P), ALLAHABAD

EXT.R4- DO. DATED 30.9.99 ISSUED BY THE MINISTRY OF DEFENCE, GOVT. OF INDIAN

EXT.R5:TRUE COPY OF LETTER DATED 9.3.02 ISSUED BY CAPT. RECORD OFFICER, OIC RECORDS, WELLINGTON

EXT.R6: TRUE COPY OF THE MADRAS REGIMENT LETTER DATED 17.7.2003

EXT.R7: TRUE COPY OF LETTER DATED 18.10.03 OF THE MILITARY HOSPITAL WELLINGTON NILGIRIS

EXT.R8-TRUE COPY OF LETTER DATED 18.8.2004 ISSUED BY LT. COL. JDAFMS (PENS) FOR DGAFMS

EXT.R9-TRUE COPY OF LETTER DATED 27.12.2004 OF MADRAS REGIMENT, SR. RECORDS OFFICER, OIC, RECORDS

// TRUE COPY //

T.R. Ramachandran Nair, J.

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W.P.(C).NO.7399 of 2004-E

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Dated this the 21st day of February, 2007

JUDGMENT

The petitioner is aggrieved by the stoppage of pension which he was receiving based on his military service. The case of the petitioner can be summarised thus:

2. The petitioner was selected for active military service in June 1963 and joined Madras Regiment in Unit No.18 B Company as Sepoy. According to the petitioner, he was awarded Sainya Seva Service Medal and Samar Seva Star in 1965. The petitioner has got a further case that he sustained severe injuries during Indo-Pak War in 1965 and was discharged thereafter on medical grounds. The petitioner was being paid disability pension and even though the initial payment was Rs.25/-, that was subsequently increased from time to time to Rs.1,375/- along with the disability demand. According to him, his service pension was stopped from June 2003 even though the disability pension was stopped in 1997. Even though the petitioner challenges the various communications served on him, the matter need not be gone into in detail in view of the order I propose to

pass .

3. During the pendency of the writ petition, Exts.R8 and R9 communications have been issued to the petitioner. In the counter affidavit, it has been clearly stated that the petitioner has not preferred any appeal against the rejection of disability pension, so far. Since the petitioner has got a remedy of appeal before the Army Headquarters First Appellate Authority, I think that the petitioner can be given a fresh opportunity to avail of the remedy of appeal considering the fact that this writ petition was pending.

4. Counsel for the petitioner Mr. Madhavan Nair submitted that since the petitioner is in a very pitiable condition, an order may be passed directing the authorities to disburse amounts by way of interim relief during the pendency of the appeal which is to be filed by him. This is a case where the pension has been stopped as according to the respondents, the petitioner is not covered by the rules governing the grant of pension. Whether respondents are right in stopping the pension is a matter which is yet to be considered on its merits by the appellate authority. Therefore, this Court may not be justified in directing the respondents to grant interim relief during the pendency of the appeal.

5. If the petitioner files an appeal within one month from the date of

receipt of a copy of this judgment before the Army Headquarters First Appellate Authority detailing his grievances, the appellate authority will decide the appeal on its merits within two months from the date of receipt of the appeal. The petitioner has got a further case that if he is examined by the Medical Board, he will be able to satisfy that his disability is above 20%. This is a matter, the petitioner can agitate before the appellate authority and this Court may not be justified in directing the appellate authority, at this stage, to examine him by a Medical Board, as the entire matter will have to be considered by the appellate authority itself.

Mr. Madhavan Nair invited my attention to the pathetic conditions the petitioner is put to. The appellate authority will bestow its attention to the fact that he had been receiving pension for long and at this advanced age without financial support, he will not be able to survive.

With the above observations, the writ petition is disposed of.

(T.R. Ramachandran Nair, Judge.)

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